Supreme Court, U.S.
FILED

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No. _____

In The
Supreme Court of the United States
October Term, 1997

Ray Watson.

Petitioner

v.

University Medical Center, Mike Parker, Bill Andrews,

Respondents,

Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Ray Watson, Pro Se
608 Marcella
Las Vegas, Nevada 89030
(702) 642-5702

.11GPP

Questions Presented for Review

1.

Petitioner did not allege a claim of conspiracy in his complaint, nor did he endeavor to prove such claim. Petitioner brought a claim of discrimination against the respondents. However, the trial court misrepresented clear facts and simply concluded that a claim of conspiracy had been brought and was not proven by petitioner. Did the trial and appellate courts :

(a) abuse their discretion and violate petitioners' due process rights by granting a summary judgment on fictitious grounds ?

(b) Depart from the usual and accepted judicial procedures.

2.

In Anderson v. Liberty Lobby Inc., 477 U.S. 242, this court held that only *"material facts"* would preclude the entry of summary judgment. Petitioner submitted affidavits that created a genuine issue of material fact that would have affected the outcome of a trial.

(a) Were these affidavits sufficient to defeat a motion for summary judgment ?

(b) Did the court abuse its discretion by failing to accept petitioners' affidavits and other allegations as true ? *Catrone v. 105 Casino Corporation, 414 P 2d, 106 Nevada Supreme Court.*

(c) Does the decisions of the trial court, and subsequent affirmation by the appellate court, conflict with Anderson.?

3.

Petitioner established many genuine issues of material fact demonstrating that the defendants proffered nondiscriminatory reasons were unworthy of credence. Are these genuine issues of material fact sufficient to defeat a summary judgment in light of this courts' holding in *Texas Dept. of Community Affairs v. Burdine, 101 S. Ct. 1089, 1095 (1981).*

4.

Petitioner's contractual rights in Article 1V of his union contract, as well as University Medical Center policies ("UMC"), prohibited discrimination in employment, promotion and all areas of work life. Respondent Mike Parker refused to grant petitioner, the only black applicant for two full-time security positions, an interview. Petitioner was the most senior applicant and had received prior satisfactory evaluations from respondent Parker.

Parker interviewed seven other applicants, while holding that his reasons for denying petitioner an interview was based on a *"survey"* conducted in lieu of established governmental policies regarding evaluations. In his decision, the UMC Hearing Officer decided that petitioner should be reinstated and given an opportunity for the next full time position. Parker did neither. The questions for this court are:

(a) Can a public employee be denied his constitutional rights to property by a ad hoc *"survey"* arbitrarily substituted for the legally approved evaluation process established by this political subdivision ?

(b) Can a public employee be denied an interview for a position in light of the contractual and governmental policies prohibiting discrimination in promotion and employment ?

(c) In light of Hearing Officer Bill Andrews' decision that petitioner should be reinstated and given and opportunity to interview for the next full-time position, does respondents have the right to disregard his decision ?

5.

In Haines v. Kerner, 404 U.S. 519, this court held that a pro se litigant's complaint must not be dismissed unless it appears beyond a doubt, that *"he cannot get relief under any set of facts"*.

(a) Does the true and material facts of this case demonstrate, beyond a reasonable doubt, that petitioner should have been afforded his constitutional right to trial on the merits ?

(b) Does the dismissal of petitioners' claims conflict with the principles reached in Haines ?

Parties to the Proceeding

The parties to this proceeding are Petitioner Ray Watson, respondents University Medical Center (herein after referred to as ("UMC"), Bill Andrews and Mike Parker.

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Jurisdiction

The date the Ninth Circuit court of Appeals decided my case was December 15, 1997. A timely petition or rehearing was denied by the United States Court of Appeals on March 27, 1998 and a copy of the order denying rehearing appears at **A7.**

Constitutional and Statutory Provisions Involved

The constitutional provisions of the Fourteenth Amendment provides; *"No state shall make or enforce any law which shall abridge the privileges or immunizes of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of law."*

The statutory provision, Section 703(a) of Title V11 of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e-2(a)(1): *(a) It shall be an unlawful employment practice for an employer-*

> *(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, condition, or privileges of employment because of race, color religion, sex, or national origin;*

STATEMENT OF THE CASE

The underlying facts of this action are simple as petitioner established a *"prima facie"* case and respondents proffered *"explanation is unworthy of credence."* Texas Dept. of Community Affairs v. Burdine, 101 S. Ct. 1089, 1095 (1981). Petitioner submitted proof in the form of affidavits showing obvious conflicting statements in the affidavits of respondent Mike Parker, Officer Larry Mathis and others.

Additionally, the fact of whether or not respondent Mike Parker failed to implement a hearing officers finding that petitioner be reinstated and given an opportunity to compete for the next available full-time position is an genuine issue of material fact in dispute.

A summary judgment in this action was inappropriate, since petitioners *allegations must be deemed as true.* Catrone v. 105 Casino Corporation, 414 P 2d, 106 Nevada Supreme Court. Finally, many other genuine issues of material fact exist that will affect the outcome of this suit under the governing law. *Anderson v Liberty Lobby Inc., , 477 U S, 242, 248.*

Background

During his employment at **UMC,** petitioner was intentionally discriminated against because of his race, Black, by respondents **Michael Parker, Bill Andrews and the University Medical Center**. Petitioner was a Per diem Security Officer and was denied a interview for **two** (2) available full time security positions. In addition to being the only qualified black applicant for one of the two full time security positions, petitioner had the most seniority of all applicants. Petitioner was within 60 hours of the required 2080 hours, where a full time position assignment would be mandatory.

There were a total of eight (8) per diem employees recommended for interviews by the personnel Department for those openings. Those recommended per diem employees, including petitioner, were sent to Respondent Parker for interviews. Respondent **Mike Parker** selected and interviewed the **seven white** applicants and **refused** to interview appellant, the only black qualified applicant.

At the outset, respondent Parker testified to the UMC hearing officer Bill Andrews that his decision not to grant petitioner an interview for the available positions was based upon a *written survey* (**A9**) that he conducted with his security supervisors and lead officers. Respondent Parkers' *"survey"* was arbitrarily created on the fly and employed to discriminatorily circumvent the regular University Medical Center Evaluation procedure . Attempting to have it both ways, Mike Parker **later** submitted to the trial court, a declaration from Francene Quick, who testified that she tried to contact petitioner for an interview.

He also submitted the affidavit of John Seeno, who testified that he tried to contact petitioner for an interview. Respondent Parker submitted the affidavit of Kathy Silver, who testified that petitioner was "*offered a per diem job offer at zero hours*". As can seen in the Hearing Officers Bill Andrews' decision (**A17**), **no such information was ever provided to him regarding these later submissions by Parker.** Parker did not present any of this information in the grievance procedure. All those witnesses, and their resulting testimony, suddenly appeared after petitioner filed this action.

To support his pretextual allegation that he tried to contact petitioner for an interview, Parker submitted (in their motion for summary judgment) the "*declaration*" of Francine Quick, (**A14**) and the affidavit of John Seeno (**A12**). Those persons falsely alleged that respondents had attempted to *contact* petitioner at his home for an interview. However, in petitioners' opposition to respondents' motion for summary judgment, he submitted the affidavit of Londa Francis which stated in paragraph 3:

> " *I am the only female residing at Ray Watsons' residence and no one regarding any job interviews pertaining to Ray Watson from the University Medical Center*". (**A19**)

In Respondents answer to petitioners' amended complaint, they alleged that they offered petitioner a new per diem position and he rejected said position. (**A16**). In support their allegation that they had offered petitioner a per diem position at zero hours, the respondents, Mike Parker and University Medical Center submitted the affidavit of Kathy Silvers, stating in paragraph 4:

> "*That your affiant attended a meeting with Mike Parker, director of Security Services at UMC; Blain Claypool, Assistant Administrator at UMC; Ray Watson; and Carlos Henderson, CCPEA Representative. Affiant states that during this meeting an offer of employment as a per diem security officer with zero hours was made to Ray Watson.*" (**A13**).

However, in petitioners' motion in opposition to respondents motion for summary judgment, he submitted the affidavit of Carlos Henderson in which he stated in paragraph 3 :

> *"That I met with Mike Parker, Kathy Silvers and Ray Watson in an informal meeting. At no time was Watson offered any per diem security position at zero hours."* **(A20)**

Consequently, no interview, or offer of any employment was ever granted petitioner. These facts alone demonstrate that genuine issues are in dispute , clearly sufficient to defeat a motion for summary judgment. FRCP 56.

Respondent Parkers' Ad Hoc Survey

The security officers were asked by Respondent Mike Parker to evaluate the candidates for the full time positions **(A.9)** Those supervisors and lead officers were: Lt. Kenneth Algood, Lt. John Seno, Lt. Cliff Ortego, Lead Officer **Larry Mathis**, Ed Yesco, and Newton Yuen. Respondent Parker alleged that, as a result of his survey, petitioner was ranked 12 out of 12 applicants **(A17)**. However, respondent Parkers' *survey* was not the normal UMC evaluation procedure and the "*evaluations*" were not signed, or dated by the above Lieutenants and Lead officers. Respondent Mike Parker submitted an affidavit testifying that Lead Officer Larry Mathis had participated and completed an evaluation form stating;

> *"5. That at the time which all eligible candidates were evaluated for the full-time positions, Mr. Larry Mathis was present and participated in the evaluation process"* **(A11)**.

In support of petitioners' opposition to respondents motion for summary judgment, petitioner submitted the affidavit of Larry Mathis **(A22)** in which he stated:

> *"I was a lead security officer at University Medical Center and supervised Ray Watson. I was not asked, **nor did I participate** in Mike Parker's evaluation process of the eight per diem security officers who applied for the full time position"...*

Obviously, respondent Parkers' proffered *nondiscriminatory reasons* lack credibility. This is a genuine dispute as to material facts that "*is not one sided*" and sufficient to defeat a motion for summary judgment.

Petitioner filed a grievance pursuant to article 4 of the union contract "*Discrimination Clause*" . In his decision on November 9, 1993, UMC Hearing Officer Bill Andrews **reinstated** petitioner and recommended that he be **interviewed for the next available full time position**. As previously mentioned, the respondents never complied with the hearing officer's decision.

REASONS FOR GRANTING THE PETITION

Departure from Accepted Judicial Procedure

Conspiracy Theory a Myth

The trial court deliberately dissimulated the facts petitioner brought in his complaint by stating in it order " *Plaintiff Ray Watson, proceeding in pro per, alleges that his former employer, University Medical Center (or UMC), discriminated against him based upon his race, when it failed to promote him to a full time security officer position, and when it subsequently terminated him.*" (A2) Conversely, petitioners' Amended complaint stated on count 7;

> *"That during his employment at UMC, plaintiff was intentionally discriminated against because of his race, Black, by defendants **Michael Parker, Bill Andrews and the University Medical Center**. Specifically, Plaintiff was a Per diem Security Officer and was denied a interview for two (2) available full time security positions."*

Likewise, petitioner never alleged that UMC "*discriminated against him based upon his race, when it failed to promote him to a full-time security position*". (**A2 par. 1**) The trial and appellate courts clearly abused their discretion with these misrepresentations of material facts. The trial court order also misrepresented facts by stating;

> *"Watson argues that the written evaluations were part of a conspiracy to deprive him of the position. In support of this contention, Watson offers the affidavit of one of his former supervisor,. **who stated that he was not asked to fill out an evaluation.** He also notes that the survey was unsigned and undated and accordingly unreliable assessment of his work. The fact that the evaluations were unsigned and undated, by itself, **is insufficient to establish a conspiracy.**"*

Clearly, the affidavit of security officer Larry Mathis speaks for itself. (**A22**). The trial court ignored material facts, specifically the affidavit of Mike Parker, in which he stated that Mathis was a participant in his "*survey*" The court outrageously avoided these facts trying to suggest that petitioner merely objected "*because he [Mathis] was not asked to participate.*".

Petitioner never brought a "*conspiracy theory*" in this action and the courts conclusion that it was not proved is moot. The word " *conspiracy*" first appeared in the trial courts' order and has nothing to do with the real issues proffered by petitioner.

With regards to the fact that respondents Parkers' "*survey*", the trial court' order stated; "*The fact that the evaluations were unsigned and undated, by itself, is insufficient to establish a conspiracy. Watson has had the opportunity to seek complete information concerning the evaluations and their authors through the course of discovery, but he has failed to present any evidence of a conspiracy to discriminate against him*". (**A5**).

The court knew and misrepresented the fact that Larry Mathis was one of the alleged authors and participants in respondent Parkers' *survey* (**A9**) and that petitioner has submitted proof - through the course of discovery in the form of an affidavit pursuant to FRCP 56. And again, there was no conspiracy allegation by petitioner and thus, no need to venture down that shadow road.

Clearly, petitioner brought this action in response to; (1) respondent Parkers' denying petitioner an interview for a full time security position, (2) failure to implement the findings of a hearing officer and ,(3) subsequently proffering non-credible, pretextual reasons to support his actions.

The trial and appellate courts have a professional responsibility to review the facts before them. However, in direct contrast to that responsibility, the trial court misrepresented the true facts, with the approval of the appellate court, and severely departed from the usual course of accepted judicial proceeding. Clearly these decisions call for the exercise of this courts' supervisory powers.

Direct Conflict with Anderson

The Ninth Circuits' decision is in direct conflict with the principles this court reached in *Anderson at 242.* Anderson held that genuine disputes which are not "*one-sided, and one which could be reasonably resolved by a fair minded jury in favor of either party.*". Petitioner has satisfied his burden of proving that respondents proffered "*non-discriminatory reasons*" were non-credible and that many genuine issue of material fact remain that will affect the outcome of a trial. The disputed facts of this action are;

1. Whether of not petitioner was contacted for an interview?
   (**A19**: Londa Francis Affidavit)
   (**A21**: Ray Watson Affidavit)
   (**A14**: Francene Quick Affidavit)
   (**A12**: John Seeno Affidavit)
   (**A17**: Hearing Officer Decision)

2. Whether or not Larry Mathis participated in respondents' *"survey"* used to discredit petitioner.

(**A22**: Larry Mathis Affidavit)
(**A11**: Mike Parker Affidavit)

3. Whether or not petitioner was offered a new per diem position *"at zero hours"* and he rejected same.
(**A20**: Carlos Henderson)
(**A13**: Kathy Silver Affidavit)

4. Whether or not respondent can arbitrarily create a surrogate *"evaluation"* procedure to deny a government employee his employment.

5. Whether or not UMC can ignore a Hearing Officers' decision , (a position created by legislative authority), and refuse to reinstate a government employee.

Despite the fact that petitioner submitted all the above misrepresentations and other genuine disputed issues to the appellate court in his appeal brief, the appellate court still affirmed the trial courts inappropriate summary judgment. The material facts show that this action is not *"one-sided"* as required by Anderson and other controlling case law. In fact, this court held in **Haines v. Kerner, 404 U.S. 519**, that it must be beyond any doubt that a pro se litigant cannot get relief under any set of facts. In its decision, the Ninth Circuit Court simply stated; *"We affirm for the reasons held in district court order, "* without affording petitioner a statement of the facts, a statement of the issues and the reasons on which the courts' decision rests.

The Questions Presented are Important

The trial court deliberately dissimulated the facts petitioner brought in this action and misrepresented the issue as a *"conspiracy theory"*. The first use of the word *"conspiracy"* was injected by the trial court and is not the issue brought by petitioner.

Subsequently, using this false theory, the court proceeded to deny petitioner his right to trial on the true issues and granted the respondents motion for summary judgment. Likewise, the appeals court merely affirmed this false theory and denied petitioner his constitutional right to trial.

Petitioner, a public employee and pro se litigant, not skilled in the *profession* of law, was deprived of his constitutional rights as secured by the Fourteenth Amendment and well settled case law. That deprivation was also administered by the appellate courts' memorandum decision, which departed from the principle of stare decisis and ignored genuine disputed facts presented by petitioner. By simply ignoring the Fourteenth Amendment, where the pro se litigant or persons similarly situated is concerned, the appellate court increased its chances of denying constitutional rights; since the chances of obtaining a writ of certiorari from this court is approximately one percent. The departure of the appellate court from the principle of stare decisis has caused petitioner to seek this courts' supervisory power to restore petitioners' constitutional rights and ensure the rights of those persons similarly situated.

Conclusion

Because the trial and appellate courts' decisions violate petitioners' constitutional right to trial, it is in direct conflict with *Anderson, Burdine, Catrone, Haines* and other controlling case law. For these compelling reasons, the memorandum decision of the Ninth Circuit Court of Appeals should be summarily reversed, vacated, and this action remanded to the United States District Court for the District of Nevada. In the alternative, the petition for a writ of Certeriori should be granted. Respectfully submitted,

Ray Watson, Pro Se

Ray Watson

608 Marcella
Las Vegas, Nevada 89030
(702) 642-5702